



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Art Unit: 1754

Harold O. Schwartz et al.

CERTIFICATE OF MAILING

Application No. 09/930,123

Filed: August 14, 2001

For: AIR TREATMENT APPARATUS AND
METHODS

Examiner: MAYEKAR KISHOR

Date: July 11, 2003

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service on July 11, 2003, as First Class Mail in an envelope addressed to: MAIL STOP PETITIONS, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.


Attorney for Applicant

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED FOR
FAILURE TO NOTIFY THE OFFICE OF A FOREIGN OR INTERNATIONAL FILING
(37 CFR 1.137)**

ATTENTION: OFFICE OF PETITIONS
MAIL STOP PETITION
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
FAX: (703) 308-6916

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The above-identified application became abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational international treaty that requires publication of applications eighteen months after filing. The date of abandonment is the day after the expiration date of the forty-five (45) day period set in 35 U.S.C. 122(b)(2)(B)(iii).

**PURSUANT TO 37 CFR 1.137(f), APPLICANT HEREBY PETITIONS FOR REVIVAL
OF THIS APPLICATION UNDER 37 CFR 1.137(b)**

1. Petition fee

- ☐ Small entity-fee \$_____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☒ Other than small entity-fee \$1,300.00 (37 CFR 1.17(m))

2. Notice of Foreign or International Filing (35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c))

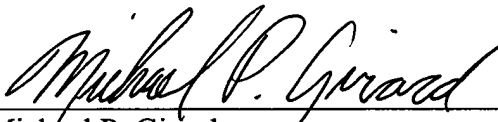
Subsequent to the filing of the above-identified application, an application was filed in another country, or under a multinational international treaty (*e.g.*, filed under the Patent Cooperation Treaty), that requires publication of applications eighteen months after filing. The filing date of the subsequently-filed international application is August 8, 2002, and the filing date of the subsequently filed foreign application is August 14, 2002.

STATEMENT: The entire delay in filing the required notice of a foreign or international filing from the due date for the required notice until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

Enclosures: ☒ Fee Payment

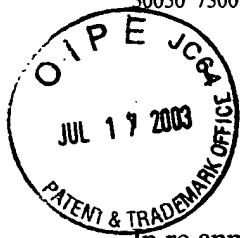
Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By 
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Registration No. 38,467

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cc: Docketing



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Attorney for Applicant

**COMMUNICATION REGARDING RESCINDED NONPUBLICATION REQUEST AND
PETITION FOR REVIVAL OF APPLICATION IF NECESSARY**

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ALEXANDRIA, VA 22313-1450
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This communication is being filed in response to the clarification notice posted on the PTO web site on June 6, 2003, and the notice published in the Official Gazette on May 6, 2003, concerning the notice requirements of 35 U.S.C. § 122. These notices reminded applicants that a request to rescind a nonpublication request is not itself a notice of foreign filing, and that an additional notice of foreign filing may be necessary in certain circumstances.

For the reasons discussed below, the Assignee of the above-referenced application believes that the notification requirements of 35 U.S.C. § 122 have been fully met in this application.

If the Patent and Trademark Office (the "PTO") determines that an additional notice of foreign filing was required for this application, however, the Assignee hereby requests the Commissioner to accept the enclosed Notice of a Foreign or International Filing and to find that

the delay in submitting the notice was unintentional and that the application was never abandoned pursuant to the last phrase of 35 U.S.C. 122(b)(2)(B)(iii). In the alternative, the Assignee hereby requests the Commissioner to accept the enclosed Petition for Revival of the application as being unintentionally abandoned.

The Commissioner is authorized to charge any necessary fees to the deposit account identified below. Should a subsequent change in the PTO's position show that no charge is necessary in this situation, a refund of any such charges made in connection with this communication is requested.

BACKGROUND

This application was filed on August 14, 2001, with an accompanying Request for Nonpublication under 35 U.S.C. 122(b)(2)(B)(i). On August 5, 2002, the Request for Nonpublication was rescinded using a paper modeled on the then-current PTO form (Form PTO/SB/36 (11-00)). A copy of this paper, the then-current PTO form and the postcard from the PTO acknowledging the receipt of the request are enclosed as Exhibits A, B and C.

A corresponding PCT application was filed with the United States receiving office on August 8, 2002, and a corresponding Malaysian application was filed on August 14, 2002.

THE ASSIGNEE HAS COMPLIED WITH 35 U.S.C. § 122

The Assignee does not believe it was required to file a separate notification of foreign filing under 35 U.S.C. 122(b)(2)(B)(iii) because the rescission of the nonpublication request did not occur subsequent to the international filing or the foreign filing. The Request to Rescind the Previous Nonpublication Request was filed before the international and foreign filings were made. Consequently, the Assignee was never required to file an additional notice of foreign filing under 35 U.S.C. 122(b)(2)(B)(iii), which applies only to an applicant who has "made a request under clause (i) but who subsequently files [an application] in a foreign country or under a multilateral international agreement." The Assignee therefore submits that no additional notice of foreign filing was required in this application.

Even if the Commissioner determines that a separate notice of foreign filing was required, it is the Assignee's understanding that the PTO considers a request to rescind a nonpublication

request as the proper notice of foreign filing. This understanding derives from the "Request to Rescind Previous Nonpublication Request, 35 U.S.C. 122(b)(2)(B)(ii)" form endorsed and distributed by the PTO in 2001. In particular, Form PTO/SB/36 (4-01), which is attached as Exhibit D, includes the following note: "Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or International filing required by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five days [sic] (45) days after the date of filing of such foreign or international application" (underlining added). The August 5, 2002, Request to Rescind the Nonpublication Request submitted in this application was nearly identical to Form PTO/SB/36 (4-01), but did not contain the note. The note, however, is not an affirmative statement by the signing party, but an explanation of how the PTO treats a request to rescind a nonpublication request. The Assignee therefore submits that the August 5, 2002, Request was a proper notice of a foreign or international filing under 35 U.S.C. 122(b)(2)(B)(iii).

**IF NOTICE UNDER 35 U.S.C. 122(b)(2)(B)(iii) WAS NECESSARY,
THE APPLICATION IS NOT ABANDONED**

The status of this application remained unclear until sometime on or about June 6, 2003, when the relevant clarification notice appeared on the PTO web site. Accordingly, any delay in filing a proper notice was unintentional. If it is determined that a notice of foreign filing was required under 35 U.S.C. 122(b)(2)(B)(iii), the Assignee hereby requests the Commissioner to accept the enclosed Notice of a Foreign or International Filing and to find that the application was never abandoned as the delay in providing the Notice was unintentional. The Commissioner may make such a finding under 35 U.S.C. 122(b)(2)(B)(iii), which provides that "[a] failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional." The word "unless" in this subsection conveys the meaning that no abandonment occurs when the delay in providing the foreign filing notice was unintentional.

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**IF THE APPLICATION IS ABANDONED,
THE ASSIGNEE REQUESTS REVIVAL**

If it is determined that the application has become abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii), the Assignee hereby requests the Commissioner to accept the enclosed Petition for Revival under 37 C.F.R. 1.137(b), which includes the requisite Notice of a Foreign or International Filing.

**IF THE PTO SUBSEQUENTLY CHANGES ITS POSITION,
A REFUND OF THE PETITION FEE IS REQUESTED**

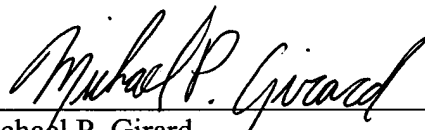
Given the number and frequency of changes in interpretation of § 122(b)(2)(B)(iii) to date, it is possible that further changes in the PTO's position may occur. To the extent that the PTO's future position is that no Petition to Revive and fee are required in this situation, a refund of the fee, if charged in this application, is requested.

The Commissioner is hereby authorized to charge any fees that may be required in connection with this communication, including any petition fee, to Account No. 02-4550. A copy of this communication is enclosed.

If any further information is required, or if the Commissioner has any questions in connection with this communication, the Commissioner is invited to call the undersigned.

Respectfully submitted,

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cc: Docketing